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Poole, Lynne; Rafanell, Irene

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Exercising 'bad faith' in the asylum policy arena

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Abstract:	<p>This article uses a 'scoping' methodology to identify the different ways in which asylum policy and practice fall short of policymakers' stated aims, are counter-evidential, and are inhumane in their effects. It highlights how asylum seekers, commonly constructed as undeserving economic migrants, are impacted by these powerful 'othering' narratives, before drawing on a breadth of research evidence to challenge dominant claims and expose the particular weaknesses of the asylum system. In doing so it asks why, if asylum policy is not informed by the evidence, does not achieve its stated objectives and yet causes suffering for those seeking asylum, such an approach persists. The article then develops the concept of 'bad faith' as an exercise of power, in order to theorise the actions of powerful agents in the shaping of asylum policy and practice with reference to hidden collective interests. It contends that the asylum policymaking community, in failing to acknowledge the suffering resulting from the diminishment of ASs into a 'typified other', are engaging in an oppressive power operation, concealed by the political narratives underpinning policy reforms from the 1999 Immigration and Asylum Act to the 2016 Immigration Act.</p>

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Abstract

This article uses a ‘scoping’ methodology to identify the different ways in which asylum policy and practice fall short of policymakers’ stated aims, are counter-evidential, and are inhumane in their effects. It highlights how asylum seekers, commonly constructed as undeserving economic migrants, are impacted by these powerful ‘othering’ narratives, before drawing on a breadth of research evidence to challenge dominant claims and expose the particular weaknesses of the asylum system. In doing so it asks why, if asylum policy is *not* informed by the evidence, does *not* achieve its stated objectives and yet causes *suffering* for those seeking asylum, such an approach persists. The article then develops the concept of ‘bad faith’ as an exercise of power, in order to theorise the actions of powerful agents in the shaping of asylum policy and practice with reference to hidden collective interests. It contends that the asylum policymaking community, in failing to acknowledge the *suffering* resulting from the diminishment of ASs into a ‘typified other’, are engaging in an oppressive power operation, concealed by the political narratives underpinning policy reforms from the *1999 Immigration and Asylum Act* to the *2016 Immigration Act*.

Key words: ‘Bad faith’, power, asylum seekers, collective action, agency

Introduction

This article provides a ‘scoping’ review of existing scholarship in order to bring into focus the different ways in which asylum policy and practice fall short of policymakers’ stated aims, are counter-evidential, and inhumane in their effects. It highlights how asylum seekers (ASs) are commonly *constructed* as undeserving economic migrants, engaging in ‘bad agency’ – ie, attempting to access benefits and labour market opportunities they are not entitled to or deserving of – and examines the *consequences* these narratives have for ASs with reference to key asylum policy reforms. It challenges dominant narratives, exposing the weaknesses of the policies and practices ASs are routinely subjected to which have not, to date, been adequately addressed by successive UK governments, seemingly reluctant to act in the face of mounting evidence. Central is the argument that policies driven by assumptions about genuineness and deservingness inform a punitive approach to policy design which impacts *all* ASs, and *not* just ‘fraudulent’ applicants as policymakers claim, and do not deter would-be ASs from ‘choosing’ the UK as their destination.

Our scoping review methodology spotlights a neglected but important question: if asylum policy is *not* informed by the evidence, does *not* achieve the objectives identified as pivotal by policymakers, and has a profoundly negative impact on those seeking asylum, why does such an approach persist? Policy commentators have been unable to adequately explain this gap between policy rhetoric and reality and our aim is to make a contribution to this endeavour by introducing the concept of ‘bad faith’ as an exercise of power. We start by examining current conceptualizations of human agency in the policymaking context, taking up Wright’s (2012) call to gaze ‘upstream’ in a bid to interrogate the actions of UK politicians and policymakers. Analysing welfare-to-work strategies, she claims the lens of ‘bad agency’ has been routinely applied to benefit claimants, neglecting the agency of politicians themselves, and especially the damaging impact of their actions. However, whilst seeking to theorise the agency of asylum-focused policymakers as a *collective* with *particular interests* in line with Wright’s call,

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we nevertheless identify *weaknesses* in the use of ‘bad agency’ as a concept for understanding their actions ‘upstream’, making the case instead for introducing the concept of ‘bad faith’.

We argue that the concept of ‘bad faith’ - understood as actions of particular collectives at the institutional level which blind them to ‘*displeasing truths*’ and generate ‘*pleasing falsehoods*’ in an effort to ‘*disarm evidence*’, take ‘*flight from social realities*’ (Gordon, 1995,p.8), and achieve their specific group interests - has explanatory potential with regards to the actions of powerful agents in the shaping of asylum policy and practice. We contend that the asylum policymaking community, in failing to acknowledge the *suffering* resulting from the diminishment of individuals into a ‘typified other’, are engaging in an oppressive power operation, concealed by the political narratives underpinning policy reforms from the 1999 *Immigration and Asylum Act* to the 2016 *Immigration Act*. We conclude that the notion of exercising ‘bad faith’ has more utility for shedding light on political actions taking place in the asylum policymaking arena than ‘bad agency’ as it recognizes that in successfully achieving their hidden objectives, policymakers can thus be said to be engaging in ‘good agency’ from their own partisan perspective.

view

‘Scoping’ the asylum policy arena: Reframing existing scholarship

This paper brings together what we know about asylum policy and practice from already existing scholarship, drawing on the wealth of empirical data generated by researchers in the field using a ‘scoping’ methodological approach. Colquhoun et al. (2014,p.1291) define this as a *‘form of knowledge synthesis that addresses an exploratory research question aimed at mapping key concepts, types of evidence, and gaps in research related to a defined area or field by systematically searching, selecting and synthesizing existing knowledge’*.

The approach involved selecting and mapping sources which identify those aspects of asylum policy that demonstrate a ‘dissonance’ between the dominant narratives and claims of powerful policy actors on the one hand, and the practice outcomes and consequences policy has for those seeking to navigate the asylum system on the other. It also sought to uncover instances whereby specific policies and practices, demonstrably counter-evidential and ineffective at meeting the stated objectives of policymakers, were nevertheless being pursued regardless. Central was our concern to reveal exercises of power, for example through the processes of ‘othering’ and agenda setting, which cause harm and suffering to those seeking asylum.

To this end, the existing scholarship was analysed using stages 1-5 of Arksey and O’Malley’s (2005) framework, whilst paying attention to Levac et al’s (2010) key recommendations where practical. For example, we sought to combine our broad research question relating to ‘exercises of bad faith’ with a clearly articulated *scope* of enquiry by focusing on UK asylum policy *within a specified time period*.

Both researchers were involved in: extracting the ‘essence’ of this broad and diverse set of sources using a qualitative content analysis method; sorting for key terms and policies that kept re-emerging in the literature; and identifying less common policy and practice issues that connected to both our research question and theoretical framework. The data chart constructed from this process was then used to generate discrete

thematic categories where power operations could be identified and subsequently theorised.

Given the small scale of the project, the scoping process was not perhaps as iterative as it could have been, though the data chart was updated to incorporate recent publications as the research progressed. Whilst the research may not be entirely replicable (Levac et al,2010), we were able to identify strong recurring themes and sub-themes in the literature which could then be used to test our analytical framework. The thematic areas identified are: The construction of bogus claimants; The shaping of a policy terrain; An asylum system fit for purpose, and; Challenging powerful asylum discourses.

The construction of bogus claimants

Not unlike the unemployed and other categories of benefit claimants, in recent decades ASs have been subjected to a barrage of unsubstantiated, often counter-evidential claims from politicians, policy advisors, and much of the mainstream media about their status and behaviours. They are routinely constructed as ‘bogus’ claimants (despite the *universal* right to claim asylum), here as ‘economic migrants’ masquerading as ASs to access rights and entitlements illegitimately. Parallels also exist in the way false binary opposites are employed; just as the ‘striver’-‘skiver’ distinction fails to recognise that many relying on benefits are in paid work and many labelled ‘skivers’ make valuable contributions (Carter and Whitworth,2015), so the ‘economic migrant’ is positioned as distinct and entirely separate from the ‘asylum seeker’. This is despite the fact that engaging in a constant struggle to feed your family *is* a battle against destitution potentially *no less profound in its consequences* than war itself, in turn triggering ‘asylum’ seeking in places where the fight for life may be perceived as less precarious (Castle-Kanerova,2002). As Tyler (2013,p.83-4) notes, the constitution of ASs as “*not-refugees*”, *bogus, illegals*’, both through policymaking, media representations and popular culture, *invokes the non-status of a person who has not been recognised as a refugee*’ and provides a political opportunity to *‘manoeuvre around the rights afforded*

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3 *the refugee, a subject category with a specific international legal genealogy*, and *'its*
4 *international obligations as a signatory to the 1951 Convention'* on the rights of
5 refugees. Furthermore, following Lister writing on poverty and the 'underclass', we
6 argue that the use of the AS narrative can thus be seen *'as an exercise in conceptual*
7 *contamination'* (2004,p.110) given that it shifts the focus from a principled humanitarian
8 approach to policymaking, towards a culture of suspicion and unwelcome, providing
9 legitimisation for the treatment of ASs as a category of 'non-humans', as distinct from
10 'refugees' who are imagined as a 'legitimate' group in search of protection
11 (Hargrave,2014).
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21 However, UK governments routinely present themselves as the tough guardians of
22 public interest when it comes to asylum policy - meeting 'genuine' need whilst
23 safeguarding resources. This has led to the continuous reconstruction of a deserving-
24 undeserving distinction as a crude process of 'othering' which has a significant role in
25 shaping the asylum narratives of the major parties once in office, making for more policy
26 continuity than change. Spencer (2011,p.55) highlights the mainstream media's role in
27 driving asylum discourse, noting how, whilst policy critics in opposition, New Labour
28 governments feared the impact of press coverage on public confidence in its ability to
29 control immigration, and did little to challenge ignorance-fuelled attitudes and build
30 support for more effective and humane policies. As Tyler demonstrates, it is an
31 accumulation and repetition of political *and* media representations that ensures the
32 construction of ASs as a 'national abject' – or 'typified other' – and the manufacture of a
33 moral panic around an 'asylum invasion complex' in the public sphere. This in turn
34 incites and sanctions *'public fear, anxiety and disgust'* (2013,p.88). The lack of positive
35 images of ASs, for example as often highly skilled individuals with the potential to make
36 a positive contribution to British cultural, social and economic life, fuels an anti-AS
37 sentiment as well as *harnessing* xenophobic attitudes amongst some sections of the
38 public. Following Hall, these narratives and the negative, stereotypical assumptions that
39 underpin them, are publicly imagined and reimagined in and through the communicative
40 practices of everyday life, 'on the streets' (1978,p.129), and now also through social
41 media. This demonstrates how politicians and policymakers, in conjunction with much of
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the media, contribute to the AS constituting process, building support for their actions, and even a *demand* for punitive policymaking and entry restrictions, recently manifesting in the rise of support for UKIP and Brexit (Clarke et al.,2017; Ford and Goodwin,2014), particularly but not exclusively from those most affected by neoliberal anti-welfarism. Indeed, in the current era, '*determined not to let a good crisis go to waste*' (Farnsworth, 2011,p.60), the UK Coalition and subsequent Conservative governments have conjured up an austerity programme (Clarke and Newman,2012). This has opened up additional opportunities for policymaking that further widen inequalities and social injustice, illustrated in the asylum policy arena by the passing of the 2016 Immigration Act (see below), fuelled by the political confidence that such actions will garner public support, especially amongst those most affected by precarisation.

Blinder (2015) notes that ASs are far more likely to feature in the 'imagined immigration' of the public than any other category of migrant, despite them making up just four per cent of immigrants in 2009 (Migrant Observatory,2011). We therefore suggest here that powerful contemporary media and political discourses from the mid-1990s have worked in tandem (Dean, 2012 – see also Hargrave,2014; Kundnani,2001) to generate such anti-Refugee sentiment, and focus public xenophobia on refugees in the UK, *whilst systematically reconstituting them* as ASs. In doing so, they have not only contaminated public conceptualisations of refugees as a group deserving of our humane interventions, but have also fuelled the shift away from benevolent, principled policymaking *and* sustained the public's authorisation of that.

The ongoing, complex interaction between 2010, 2015 and 2017 UK governments' representations, media accounts, policy reforms and public attitudes continues to perpetuate the marginalisation and suffering of ASs, creating further inhumanity in public life (Philo et al,2013). Consequently, ASs are now almost entirely consumed in the 'asylum problem' narrative, falling victim to what Bloch and Schuster term a '*moral consensus against asylum seekers*' (2002,p.404). Those historically seen as deserving of support have been *re-presented en-masse* as a danger to 'the British way of life' and

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3 economic opportunity for British citizens, rather than *in danger themselves*. The
4 'problem' presented by increasing numbers of asylum applications is constructed as a
5 simple 'social fact', requiring a 'technical', value-neutral response, self-evident and
6 rational, whilst the values and judgments informing policy are marginalised in
7 discussions about what needs to be done (Clarke,2001).
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14 The negative assumptions underpinning powerful asylum discourses work to construct
15 ASs as a legitimate focus of punitive policies and controlling interventions so extreme in
16 form as to include: indefinite detention; enforced dispersal; exclusion from the
17 mainstream welfare and employment systems, and hence wider society; benefit
18 dependency coupled with reduced entitlements; and, at key points in the asylum
19 process and sometimes on numerous occasions, destitution. As such, policy is
20 profoundly damaging to *all* individuals seeking asylum. Moreover, where it marginalizes
21 claimants, it has consequences for their integration should they acquire 'refugee' status
22 (Mulvey,2010,2013).
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33 The shaping of a policy terrain

34 The uses and abuses of detention

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39 Officially, the Home Office (HO)/UK Border Agency (UKBA) uses detention only in
40 specific circumstances: when there is a need to establish a person's identity and/or the
41 basis of their claim; in the run up to removal; where a 'fast-track'/'super fast-track'
42 procedure is deemed appropriate; or where it is believed applicants will not comply with
43 conditions attached to release or temporary admission. However, the need to minimize
44 'community tensions' and 'threats to social cohesion' have been used to legitimize
45 increased detention (Malloch and Stanley,2005), despite the greater cost-efficiency of
46 community-based alternatives (Detention Forum,2015). Moreover, evidence suggests
47 that ASs can be detained on 'signing' at immigration offices without warning and risk
48 being detained, released and detained again, whenever deemed appropriate by the HO,
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and for indefinite periods. Bosworth (2014) thus argues that detainees have fewer legal protections than convicted criminals. Furthermore, claimants can be detained irrespective of their psychological/physical vulnerability (BID,2012). Significantly, the official line that detention is used primarily to facilitate removal is *not* supported by the UK government's own statistical evidence: in 2015 just 47% of detainees were deported from detention (HO,2015a). Detainees *can* apply for 'bail' after seven days, but *only* if they can pay or have 'sureties' willing to pay if they break the conditions (eg missing a signing). The independent charity *Bail for Immigration Detainees* has extensively researched this process, highlighting the lack of bail accommodation provided by the HO (BID,2014a), as well as a lack of transparency, fairness and accountability (BID,2014b). It concludes that penal environments are *routinely* used for administrative convenience (BID,2014c), with lengthy stays resulting from *systemic inefficiencies*. That policymakers have ignored this evidence suggests that creating a just, humane system for processing asylum claims is not a key driver of policy and practice.

Dispersal and accommodation on a no-choice basis

Whilst the rhetoric is of spreading the financial and social costs (Robinson et al,2003), the consequences of dispersal are significant. They include societal marginalisation and reliance on informal support where there are gaps in statutory provision (Wren,2007), whilst simultaneously excluding applicants from '*social and kinship networks*' crucial to their settlement (Schuster, 2005,p.3). The Joseph Rowntree Foundation (2013) argues that dispersal - initially fraught with problems under the now defunct NASS (National Asylum Support Service) which contracted out housing provision to *local authorities* - saw *improved* outcomes as experience was gained, support agency networks were developed, and wider objectives relating to social value, social cohesion, settlement and integration were nurtured. However, following the UKBA's decision to outsource *only* to private providers after 2012 - a result of the cost cutting objectives which could only be achieved '*by procuring much poorer accommodation in less desirable areas, or by using the accommodation more intensively, or both*', alongside a '*failure to exercise due*

diligence in the procurement process' (JRF, 2013,p.5-7) - the broader objectives that *had* impacted positively on ASs as dispersal policy bedded in, were subsequently neglected. This lends further weight to the argument that UK government action in this policy arena must be serving a purpose other than supporting ASs.

No right to paid work or access to mainstream welfare support

Since 2002 it has been illegal for ASs to access paid employment, with very few exceptions, positioning them as benefit dependents irrespective of their skills, willingness, or ability to find work (Doyle,2009). This feeds UK government rhetoric that as net *consumers* of public funds, the costs of claimant support must be reduced *and* shared, thus legitimising both cuts *and* the dispersal system. Able to track employed ASs, and amidst a moral panic about welfare expenditure, denying applicants the right to work seems counterintuitive, once again suggesting another set of objectives at play.

As enforced benefit dependents, ASs have been systematically excluded from accessing the mainstream social security system, and forced to rely on separate, lower-level entitlements. Central is the *1999 Immigration and Asylum Act*, section 95 (S95) of which offers cash support, via the Application Registration Card. Its flat rate value was reset at £36.95 in August 2015 - a considerable downgrading of support for families with children (previously paid £52.96 for each child under 16). This resulted from an internal HO review which concluded that previous arrangements were too generous and did not '*reflect the possibility of economies of scale within households*' (Gower, 2015,p.8). The *stated objective* is to make the UK a less attractive destination. This is despite evidence that such policies are unlikely to work given ASs' lack of knowledge about comparative welfare support levels (discussed below). Once again the spectre of hidden objectives, beyond the provision of a fair, humane asylum support system rears its ugly head.

Hard case funding for refused asylum seekers and destitution

Until the passing of the 2016 Act, when S95 support was withdrawn, usually 21 days after the final refusal of a claim, ASs experienced forced destitution unless they could access ‘hard case support’ under section 4 (S4) of the 1999 Act, or there were dependent children (discussed below). To qualify for S4 support the applicant had to be destitute and satisfy one or more of 5 conditions:

‘(a) he is taking all reasonable steps to leave the UK or place himself in a position in which he is able to leave the UK, which may include complying with attempts to obtain a travel document to facilitate his departure;(b) he is unable to leave the UK by reason of a physical impediment to travel or for some other medical reason; (c) he is unable to leave the UK because in the opinion of the Secretary of State there is currently no viable route of return available; (d) he has made an application for judicial review of a decision in relation to his asylum claim; (e) the provision of accommodation is necessary for the purpose of avoiding a breach of a person’s Convention rights, within the meaning of the Human Rights Act 1998 (for example, because they have submitted further representations)’ (Gower, 2015,p.13).

S4 support was thus primarily available to those deemed to be *‘taking all reasonable steps’* and those willing but unable to leave for reasons beyond their control. Provision comprised compulsory accommodation and a ‘voucher card’ for use in particular shops, to the flat-rate, weekly value of £35.39. Entitlement was regularly reviewed and could be withdrawn at any point. Hickey (2008) and Gillespie (2012) argue that refused ASs were thus at risk of forced destitution where the UKBA would not accept they had taken ‘all reasonable steps’, even when the *International Organisation for Migration* has been unable to assist someone to return (eg due to a lack of travel documentation, or the ‘home’ nation either refusing to recognise them as their national, or agree to their return) (see: Crawley et al,2011; Refugee Council,2012). The limitations of S4 as UK governments refused to accept evidence regarding the complexities of and barriers to

return is a clear illustration of a political unwillingness to address the system's deficits, hinting again at other agendas at work.

Picking up the case of families with dependent children, S95 support continued until these families left the UK. However, section 9 (S9) of the 2004 *Asylum and Immigration (Treatment of claimants, etc.) Act* empowered the state to terminate *all* support (including the NHS, other than in an emergency/for a communicable disease) for families deemed by the Home Secretary to be in a position to leave after fourteen days of that decision. The result again would be forced destitution. Cunningham and Tomlinson (2005) equated this to an attempt to '*starve them out*', noting that S9 *also* threatened to accommodate children consequently deemed 'at risk' of destitution, at enormous cost to the state. They argued that families may well 'go to ground' subsequently navigating the combined threats of destitution and irregular migrant status, rather than lose custody of their children. Interestingly, the HO's *own* 2006 report concluded that S9 measures did *not* significantly affect ASs' behaviour with regard to cooperating with removal (Cunningham and Cunningham, 2007). Subsequently, this provision was not used routinely. However, in August 2015 the HO (2015b, p.2) suggested it may resume on a 'case by case' basis *despite its ineffectiveness*. As this would result in what Wacquant (1998, p.31) terms '*state induced illegality*', here built into the very logic of the asylum system, it represents a further indication of UK governments' commitment to political objectives beyond the delivery of an effective support system.

In 2015 the UK Parliament voted to respond positively to the *All Party Parliamentary Group on Refugees and Migration* (2015) report recommendations to impose a 28 day detention limit, pursue community-based resolutions, and thus tackle the over-use of detention. However, that did not mean a UK government change of direction. Indeed, the passing of the *2016 Immigration Act* suggests the opposite - further punitive measures likely to *increase* destitution, a rejection of the call for both a detention time limit of 28 days and the right to work where ASs have been awaiting a decision for over 6 months, and few concrete proposals to improve the effectiveness of the assessment

process. Indeed, the *Act* continued to reflect problematic narratives and reinforce the damaging actions by policymakers. For example, Part 5 of the *Act* changes the support provisions afforded by the *1999 Act*, replacing S4 with new arrangements to cover *all* destitute ASs *and* their families should they face what is judged to be a '*practical or genuine obstacle*' (HO,2015c, 2015b) to leaving the UK, following a refusal. This means families with dependent children who would have remained in receipt of S95 support now have the same *one* recourse to public funds as *all* other ASs, and that is *conditional* on passing the practical/genuine obstacle test. The HO justified this in terms of removing financial incentives for failed ASs to stay. The loss of appeal rights at this juncture was explained away on the grounds that genuine obstacles '*are generally straightforward matters of fact (eg medical evidence shows the person is unfit to travel)*' (HO, 2015b,p.3). However, given the diverse obstacles facing refused applicants relating to documentation and recognition, it is clearly not that simple. Indeed, where the system is not perceived to be robust - starting as it does from the assumption that applicants are 'bogus', not recognising asylum claims from 'safe' countries, and where a genuine fear of return persists - refused applicants will remain, hoping to make a 'fresh' claim, or surviving as irregular migrants. Research suggests that for many refused applicants, the risks of irregular migrant life are seen as preferable to returning to a place where they feel unsafe (Crawley et al,2011). Here there is a gulf between the HO's and individual AS's perceptions regarding what constitutes both a reason to seek asylum *and* a safe environment. Moreover, we must consider the extent to which the rate of successful appeals suggests that the system is not in fact fit for purpose, driven as it is by perceptions that most are fraudulent, and *not* by evidenced debate (Fletcher,2008).

An asylum system fit for purpose?

In 2014 59% of applications were initially refused. A majority of refused applicants lodged appeals - in 2014 28% were successful, not including those who made 'fresh' claims as additional evidence was accessed. Considering decisions since 1994, the majority of initial decisions have been refusals, although among 2004-2013 cohorts on

average 76% of rejected applicants appealed, with a success rate of 24%, and from 2007 to 2014, successful appeals ranged from 22.5% to 28.5% (Blinder,2015a).

These figures should be seen in the context of those procedures used to maximise the number of immediate refusals and swift removals (Fletcher,2008), and dubious initial and 'substantive' assessments, alongside appeals practices, in a context where there is a growing culture of disbelief (see: Asylum Aid,1999; Canning,2014; HRW,2010; Maniar,2014; UNHCR,2006). Here robust decision making and just process are routinely sacrificed in the face of political imperatives to demonstrate a reduction in applications *and* numbers granted leave to remain. ASs themselves report being viewed and treated as 'less than human' by policymakers and street-level bureaucrats engaging in damaging practices that reflect punitive policy agendas (Gillespie,2012; Green,2006).

As signatories, the UK government cannot return ASs to a place of danger without being in contravention of the EU (Council of Europe,1950) and UN conventions (see UNHCR,2010), and cannot be certain that the system is robust enough to ensure this - as the appeal statistics illustrate. Hence the use of forced destitution to promote voluntary repatriation is tempting for those minded to refuse as many as possible (Schuster, 2005,p.4). Hamilton and Harris (2009) show ASs are *most* at risk of destitution resulting from administrative errors/delays, but claim there has been a shift away from making the system more fit for purpose and increasing capacity. Indeed, the HO (2015c,p.2) estimates that in 2014-15, S95 support cost £100million, almost half of which was for refused AS families, with the cost of S4 support estimated at £28million in that same period. Defending proposals embodied in what became the 2016 Act, the HO (2015c,p.2) claimed this support: *'is wrong in principle and sends entirely the wrong message to those migrants who do not require our protection but who may seek to exploit the system. It also undermines public confidence in our asylum system.'*

However, the decision to tighten eligibility and reduce appeal rights as a mechanism for reducing costs seems preferable to tackling backlogs, getting it 'right first time' (Asylum

Aid,2013), and hence decreasing housing, benefit, administrative and legal costs. This is puzzling, particularly where controlling public expenditure and developing a just asylum system are claimed priorities.

Challenging powerful asylum discourses

Contesting claims to deterrence

Examining recent policy developments, Spencer (2011,p.60) argues there has been a concerted attempt to reduce UK AS numbers, highlighting the role of increased carrier sanctions, and attempts to establish ‘*extra-territorial processing*’ - ie, the provision of temporary protection and application processing *outside* of the state territory where asylum is being sought (Betts,2004). The criminalisation of ASs has been the focus of Webber’s (2012) work. Notwithstanding the use of detention, contemporary developments have also worked to increase the numbers out with the law *on arrival*. Documentation is a key mechanism here whereby those not in possession of the correct paperwork are criminalised (along with their facilitators) and become a focus for immediate deportation. Opportunities for business are also increased through such processes, for example through outsourcing to private agencies working in ‘buffer’ states and on UK borders, adding to contracts for other provisions such as detention (Tyler,2013).

Others have examined changing procedures around accessing AS status and associated support mechanisms, noting their *assumed* deterrent effect. For example, Cunningham and Tomlinson (2005) argue that since 2002 those deemed not to have applied speedily enough are denied support whilst their claim is considered. In addition, since 2000 those needing housing support must accept forced dispersal and no-choice accommodation, or be left dependent on informal support (Robinson et al,2003; Schuster,2005). Fletcher (2008) surmises that such techniques seek to facilitate a reduction in numbers through deterrence and a culture of unwelcome.

So, what do we know about the impact on ASs' destination choices of these initiatives? The Westminster government's *own research* refutes that applicants have detailed social policy knowledge and come seeking benefits, noting that where 'choice' of destination *is* exercised it is in relation to *other* factors (Robinson and Segrott,2002). Crawley (2010,p.5-7) found similarly: only about a quarter of her respondents had any prior knowledge of UK benefits; most had '*no expectation*' of welfare support. The overwhelming majority worked in their home country and expected to remain self-reliant on arrival; few knew they would not be allowed to work. Less than a third *chose* the UK and those who did cited '*the presence of family and friends and a belief that their human rights would be respected...as the most important factors underlying that decision*'. Others cited access to relevant travel documents, though '*the single most important reason*' cited was the role of agents '*facilitating the journey*'.

Contesting claims to the 'bogus'

Focusing on the evidence around the *context* of asylum seeking activity enables us to highlight the impact of wider structural forces and global realities, and question homogenizing narratives around the 'bogus' applicant. Here Crawley (2010,p.5) claims '*there is clear evidence that conflict is the single biggest reason why asylum seekers come to the UK... most asylum seekers are primarily concerned with escaping from persecution or war*'. Gittins and Broomfield (2013,p.20) found '*A large proportion of applications...are linked to security situations in third countries*', for example in '*Afghanistan, Pakistan, Iran, and Iraq; the civil war in Syria, tensions in the Southern Mediterranean; and the situation in Chechnya and the Caucasus region*'. Fletcher (2008) also cites research showing the number of asylum applications is more closely linked to global conflicts than UK social policy shifts, and Canning (2014) highlights the increased perpetration/threat of sexual violence against women during conflict as a trigger in their asylum seeking (see also: Refugee Council,2009).

Clearly, there is a need to recognise the relationship *between* structural forces and individual agency, by considering wider contexts. Acknowledging that the ‘agency’ of ASs is inherently ‘social’ and situational lays bare the crude and reductionist nature of UK asylum policy, illuminating the unacceptability of policy agendas which assume ‘universal’ asylum seeking motivations. Such pathologising narratives deny ASs’ plight in all its diversity, and that agency is socially contextualised.

That such insights have *not* informed the vast majority of UK asylum policies again suggests policymakers are ignoring the evidence. Fletcher (2008,p.26) concludes:

‘The paucity of references to statistics and evidence in political discourse reveals how ideas gain ground not through reasoned discussions informed by empirical research, but through the expounding of ideologies, rhetoric and persuasion. Even when Parliament is presented with evidence that severely undermines the explanation behind a policy, this does not prevent the legislation being passed.’

Indeed, the reality is the continued treatment of ASs as ‘bogus’ and undeserving until ‘proven’ otherwise, with dire consequences for *all* applicants given we cannot know *who* the ‘genuine’ refugees are until their applications have been *fully and justly* assessed. Here, preventing some ‘undeserving’ individuals from taking advantage of the system, takes precedence in policy shaping, even if that means leaving ‘deserving’ ASs destitute and unprotected.

The policy themes evidenced here cast serious doubt on the validity of claims to the ‘bogus’, and the stated objectives of asylum policymaking regarding efficiency, effectiveness, and fairness on the one hand, and deterrence on the other. So what *are* policymakers’ actions seeking to achieve in this policy arena? How might we better understand the gap between rhetoric and reality? The next sections address these questions by examining the work of others grappling with these broad issues of counter-evidential and apparently contradictory policymaking, before going on to conceptualise

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3 'bad faith' as an exercise of power which can be used to theorise asylum policymaking
4 and its impacts.
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10 Looking 'upstream': Reframing agency 11 12

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14 In recent years there has been increased interest in the concept of agency in social
15 policy analysis. Wright (2012,p.310) defines agency as *'purposive action or behaviour'*
16 in order to examine how it has been operationalised by policymakers in the welfare-to-
17 work arena with particular regard to the now routine political claims that working age
18 benefit claimants are engaging in 'bad agency', ie, purposively acting to avoid work and
19 access benefits that they do not deserve. Hence, it is argued that, culpable for their
20 unemployment status and benefit dependency, they must be subject to increasingly
21 punitive welfare reforms aimed at stimulating entry into paid employment through crude
22 behaviourist techniques (see also eg: Wiggan,2012). However, Wright (2012) argues
23 that in gazing 'downstream' in a bid to universally responsabilise individuals for their own
24 plight, policymakers draw attention away from the agency being exercised by
25 themselves. One of Wright's objectives is to redress the balance by bringing centre
26 stage the actions of policymakers, and questioning their representations of themselves,
27 along with frontline workers, as mere 'respondents' to the 'problem', under the cover of
28 'rational, neutral actor', seeking only to defend the interests of the 'strivers' whose hard
29 work finances the welfare system that is being milked by the feckless idle.
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43 These processes render claimants legitimate targets for increased scrutiny, benefit
44 conditionality, and sanctioning. Meanwhile, policymakers remain impervious to counter-
45 evidence suggesting the opposite of their homogenising and stigmatising labelling
46 practices, namely most who can work do, most who are out of work want to work, and
47 most who find work do so without the help of job programmes. As Wright (2012,p.321)
48 notes, *'in policy rhetoric, the lived reality...is largely ignored in favour of a version of*
49 *events that magnifies the worst examples of misbehaviour...and generalises this to all*
50 *benefit claimants'*, fuelling their construction as immoral 'others' acting in a vacuum,
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untouched by structural unemployment, recession, and involuntary individual constraints on their labour market entry. These narratives feed the stigmatisation and marginalization of particular categories of claimant (Lister,2004), and for Wright indicate 'bad agency', *but on the part of policymakers themselves*.

This important argument raises questions about the actions and motivations of politicians which are highly relevant to the experiences of ASs too. However, whilst following Wright's important call to spotlight actions 'upstream' at the level of policymaking, we nevertheless argue that applying the concept of bad 'agency' to these policymakers is problematic. This is because in so far as their activities construct the claimant as the undeserving 'other', in a context of ideologically-driven anti-welfarism, policy actors are *not engaging* in 'bad agency' at all. Indeed, where resultant policies reflect their broad ideological and collective group interests (Wiggan,2015), what constitutes 'bad agency' from the standpoint of claimants, is 'good agency' from that of powerful actors. Ideology is seemingly more important than the evidence, but we would argue that partisan interests are also powerful shapers of policy design in the furthering of what can be seen as a global political project to disempower the 'other' in all its guises. Such operations are noted by Anderson (2013) who highlights efforts to marginalize and control the mobility of the global poor. Central are mechanisms through which they are stigmatised as this century's '*folk devils*', and a threat to social order. Here she draws parallels with processes in evidence as far back as the fourteenth century vagrancy laws.

Barnes' (2000) work provides a nuanced account of collective agency with reference to the *real* practice of agents within a grouping, bureaucracy or administrative system, and is valuable here in two key ways. First, he argues that social actions, understood as the practices of 'responsible agents' who act fully reflexive of the external pressure of the 'system', are *oriented to success according to their own interests*. Specifically, Barnes conceives agency as the *reflexive, strategic activity* of individuals making *calculative assessment* in the face of the demands of *specific contexts*. In this sense agency, by definition, is *intentional* - it has a purpose in that it is directed to goals, themselves

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3 shaped by particular interests. These interests can be covert or exposed, but all agency
4 attempts to successfully achieve specific goals. Second, Barnes posits that whilst
5 individuals constantly adapt, internalize and habituate beliefs and practices to fit newly
6 encountered situations according to personal goals, interests, and changing contexts,
7 they *always* do so under the *constraints of group dynamics*. Indeed, as individuals do
8 not operate in isolation but are in constant interaction with others, it is in and through
9 this interaction within the group setting that agency emerges as a *collective practice*
10 aimed at achieving *collective interests*.
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12 It follows that if we understand agency as actions *purposefully oriented* to achieving
13 success for a *collective of individuals* composing an administrative or institutional
14 corpus, in the asylum arena policies will be oriented to successfully fulfil the *particular*
15 *interests and goals of the policymaking collective*. Asylum policies can thus usefully be
16 understood as the product of particular interests, and their design and implementation
17 will correspond to and reflect the goals of the government of the day, and the HO in
18 particular.
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20 Here agency is conceptualized as fulfilling a particular collective's interests, over and
21 above those of other collectives. Thus agency should be conceived as 'expedient' rather
22 than 'good' or 'bad'. It seeks to achieve its goals, by whatever means necessary, and
23 either succeeds or fails.
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25 Making reference to the *partisan interests of policymaking collectives* thus has the
26 potential to address the specific question of what drives policy reforms that are
27 seemingly wilfully blind to: the complexity and diversity of claimants' identities, situations
28 and motivations; the impact that wider structural forces and global realities have on
29 them; and evidence that the current system is neither fit for purpose or effective, nor
30 humane in its dealings with ASs – all of which have been demonstrated by our scoping
31 review. Indeed, the maintenance of these policies and practices *must* respond to
32 particular 'goals' or 'interests' not explicitly formulated by policymakers.
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34 However, we further argue that policymakers' agency goes beyond mere expediency in
35 so far as it has consequences for other collectives. For example, in the AS arena where
36 the actions of policymakers are damaging and cause suffering to others, the agency of
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those ‘upstream’ acquires a political and moral dimension. Moreover, in denying or blinding themselves to the nefarious consequences of their actions, they are engaging in a form of agency which is better understood as an exercise of ‘bad faith’ than ‘bad agency’. This paper now turns to focus on conceptualisations of ‘bad faith’ that further our analysis of policies and practices which are dissonant, counter-evidential and cause suffering.

Conceptualising ‘bad faith’ as an exercise of power

This section clarifies what constitutes an act of ‘bad faith’ by borrowing from Gordon (1995,1993) in particular, and conceptualises ‘bad faith’ as an exercise of power.

Gordon (1995) reconstructs Sartre’s notion of ‘bad faith’ from an individualistic to a collectivist concept. He argues that where particular collectives at the institutional level blind themselves to *‘displeasing truths’* and generate *‘pleasing falsehoods’* in an effort to *‘disarm evidence’*, deny *‘social realities’* (Gordon, 1995,p.8), and thereby achieve their group interests, they are engaging in acts of ‘bad faith’. Further, he posits that ‘bad faith’ exemplifies an attitude in which human beings attempt *‘to take flight from freedom.... hide from responsibility’* (Gordon, 1993,p.1), and in doing so evade practices which recognize humanity whilst constituting categories of people in ways which are false, but are believed: *‘For in bad faith, one chooses the false as the true while being aware of its falsity. One deceives oneself’* (Gordon, 1993,p.2). His work on antiblack racism examines how African-Americans in particular are constituted in relation to an absence of whiteness, and are this constructed as a non-white, non-human (and hence racialized) homogenous ‘other’. In this way they become fixed in a category of ‘generalised other’ which embodies only negative attributes and inferiorities, and negates the recognition of black individuals as humans. Such practices and their supporting narratives work to obscure the responsibilities we have towards others. Moreover, unwilling to face the suffering their actions cause, powerful agents are engaging in a form of self-deception and are exercising collective ‘bad faith’ which embodies an *‘ontological denial of human reality’* (Gordon, 1995,p.98). Here Gordon

understands acts of 'bad faith' as a productive mechanism of power, that is, one that actually constructs new social reality through the process of 'othering'; the constitution of the 'generalised other' obliterates the realities of the individual's 'lived experience'. This power operation seeks to manipulate the perceptions of different 'dominated' groupings by drawing attention away from powerful and towards less powerful collectives, ie the 'othered' ASs in our policy arena. As already noted, the mainstream media is a powerful means through which to shape perceptions and disseminate particular representations of ASs (see also Lukes,2005), notwithstanding the complex and dynamic interplay of media, politicians and policymakers and sections of the public as actors in this arena, acknowledged above.

In this particular policy site, we must also understand this power operation in terms of the reconstruction over time of the AS as a separate and inferior 'subject' to the refugee, with neither equivalent rights nor legal protections, as previously noted, itself bound up with the rejection of their humanity, individuality and lived reality. The suffering that results is denied, the research evidence either dismissed or ignored.

Conceptualising 'bad faith' in this way captures *both* the negative and nefarious consequences of purposive asylum policymaking for those attempting to navigate their way through the system – in short, their suffering – but also the role policymakers' actions 'upstream' play in creating and perpetuating a form of self- and other- deception. An approach which identifies power by conceptualising agency as exercises of bad faith resonates with Bourdieu's (1995) concept of symbolic power. Here the narratives nourishing current AS policy and practice over time work to both conceal the particular power relations at play, *and* enable the misrecognition of an oppressive relationship as one characterised by the provision of help, support and effectiveness. For Bourdieu (1995,p.68): *'every power which manages to impose meanings and to impose them as legitimate by concealing the power relations which are the basis of its force, adds its own specifically symbolic force to those power relations'*. This in turn provides an effective framework for understanding the power mechanisms that *sustain* such exercises of 'bad faith'. We therefore argue that the central power mechanism at work in

the asylum policy arena is a form of 'symbolic power', exercised as a type of agency which hides its real, intentional actions, and which uses a set of labelling practices to systematically reconstruct the lived realities of heterogeneous individual ASs into a 'generalised other'. By doing this, policymakers are engaging in a form of 'bad faith' that is built upon the resultant narratives; they are turning a blind eye to evidence that their policies and practices do not achieve their own stated objectives and, by ignoring their effects on ASs, are engaging in a form of self-deception. This then is *how* power operations occur tacitly in the devising and implementation of asylum policy, resulting in injury and suffering, and the perpetuation of ineffective policy and practice, revealed here by the *actions* of the holders of power *and* with dire consequences for ASs, as evidenced in our scoping review.

Foucault argues that we must identify the mechanisms by which power operates in order to perceive where power resides: '*Power is neither given or exchanged . . . but rather exercised. It exists only in action*' (1980,p.89). Furthermore, he too contends that power is not only oppressive but also productive, ie, it constitutes the subjects immersed in it - in the asylum arena resulting in the 'othering' we have exposed. However, it *also* reveals the particular interests of the policymaking collective, hidden by the narratives underpinning AS policy and practice. The exercise of political power thus seeks to ensure that policy issues are formulated in the interests of a particular collective, whilst hiding their interests and goals from scrutiny and open debate – a covert operation involving 'agenda setting' and the manipulation of public attention which can be 'observed' and 'measured' by evaluating the visible outcomes that the particular practices of one person or group have for another (Lukes,2005).

Under this analytical lens, and based on what we have uncovered in our critical analysis of AS policy and practice, we argue that policymakers, exercising agency across the last twenty years, have been playing out a particular set of interests centring around the need to: (i) be *seen* to be responding to pressures coming from the wider public and political environment relating to immigration fears (themselves shaped and fuelled by complex interactions between much of the mainstream media, politicians and sections

of the public, as posited above) and; (ii) exercise their neoliberal ideological proclivities, not least around expanding markets, rolling back welfare entitlements and broader social rights, and maximising opportunities for profitmaking. This brings centre stage agency understood as ‘bad faith’ that functions to fulfil *unacknowledged* interests, and connects to Wiggan’s (2015) call to read policy *politically*.

Finally, to be clear, we are not saying that there is no ‘neglectful’ agency at play here in terms of poor management, understanding and judgment. Rather, we are arguing that these dimensions of policymakers’ actions are not sufficient *on their own* to explain what is happening in this arena in terms of the persistence of counter-evidential policy and practices.

Conclusion

This paper provides an analysis of asylum policy from the late 1990s to the 2016 *Immigration Act*, drawing on already existing research to show how policymakers have: routinely ignored evidence about ASs’ diverse identities, experiences and motivations; failed to acknowledge the negative impact of asylum policies on *all* applicants; largely ignored the widely-documented weaknesses of asylum assessment/support processes; and fallen short of their stated objective of deterring UK asylum applications.

It also illustrates the numerous ways in which forced destitution, detention, and other punitive policies have been used as sticks to beat asylum claimants with, whilst the rhetoric that the UK is ‘*committed to providing a place of safety for genuine refugees*’ (Gittins and Broomfield, 2013,p.3) retains its place in political discourse.

Wright (2012,p.322) argues that policymakers in the welfare-to-work arena ignore ‘*well-documented, but politically unpalatable, causes, which block the development of effective policies*’, and in doing so engage in ‘bad agency’. This article has argued similar processes are underway in relation to asylum policy but has theorised that successive UK governments have demonstrated their commitment to the wider global political project of disempowering the ‘other’, not least by constructing ASs as ‘bogus’, undeserving claimants and consequently legitimising punitive policy and practice

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developments which can be utilised to present themselves as responsive to the electorate's immigration concerns that their *own* actions have worked to generate and sustain. It has looked 'upstream' at the actions of policymakers themselves, *but* in doing so has posited a particular conceptualisation of 'bad faith', as an alternative to 'bad agency', in order to facilitate a better understanding of the particular actions of particular neoliberal government agents in the AS policy arena, in a particular time period, with reference to their hidden interests.

At a time when little political capital can be made out of offering refuge to those fleeing persecution and violence, there is much to be generated from focusing on the imagined 'pull' factors driving increased UK asylum claims by 'economic migrants' seeking to abuse the system. Policymakers can present themselves as 'tough' on fraudsters, achieving measurable outcomes in terms of taxpayers' money saved, and fuelling the romantic and imaginary in relation to protecting 'social cohesion', defending 'the British way of life' and maintaining opportunities for British citizens. Here immigration in the form of asylum seeking is weaponised, as 'bogus'-asylum narratives and the practices they inform are used as political currency to further the interests of policymakers themselves, whilst distracting attention away from neoliberal objectives and the impact of anti-welfare activities legitimised by the particular politics of austerity at play. Given the outcome of the 2015 and 2017 UK General Elections, we might reasonably conclude that such a strategy is set to enjoy continued success. Indeed, whilst recognising the Conservatives were returned with a reduced majority in 2017, and in the context of Brexit and increased calls from some political quarters to abandon Human Rights legislation on the one hand, and the growing pressures on the UK economy and a diminished social safety net still under siege on the other, it seems reasonable to imagine a further deterioration of the plight of ASs, as illustrated by the passing of the *2016 Immigration Act*. This makes it all the more pressing to challenge the current hegemony. By identifying and thus exposing the specific mechanisms at work in the current context, it is hoped that effective resistance can be better facilitated.

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For Peer Review